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notes executed by the defendant as accommodation maker for her husband. These renewal notes were executed by the defendant after her husband's death. By the Act of June 8, 1893 (P. L. 344), § 2, a married woman was permitted to make all contracts except that "she may not become accommodation indorser, maker, guarantor or surety for another." This act was in force at the time of execution of the original notes by the defendant. *Held,* in making the original notes the defendant, although at the time a married woman, assumed a moral obligation to pay them, and such a moral obligation will support an express promise to pay made after discoverture. *Rathfon* v. *Locher* (1906), — Pa. —, 64 Atl. Rep. 790.

This doctrine was first asserted in the early English case of *Lee* v. *Muggeridge* (1813), 5 Taunt. 37, since overruled, and seems to have been adopted by the courts of Pennsylvania and Louisiana. *Holden* v. *Banes,* 140 Pa. 63; *Hemphill* v. *McClimans,* 24 Pa. 367; *Brownson* v. *Weeks,* 47 La. Ann. 1042. Most of the courts, however, qualify this holding to the extent of allowing a moral obligation to be sufficient consideration only where such obligation arose through a pre-existing legal liability which has since become inoperative through some positive rule of law. In *Mills* v. *Wyman,* 3 Pick. 207, JUSTICE PARKER, delivering the opinion of the court, said, "It is said a moral obligation is a sufficient consideration to support an express promise, and some authorities lay down the rule thus broadly; but upon examination of the cases we are satisfied that the universality of the rule cannot be supported, and that there must have been some pre-existing obligation which has become inoperative by positive law, to form a basis for an effective promise. * * * In all these cases there is a moral obligation founded upon an antecedent valuable consideration. These promises therefore have a sound legal basis." *Eastwood* v. *Kenyon,* 11 Ad. & El. 438; *Cook* v. *Bradley,* 7 Conn. 57; *Wiggins* v. *Keiser,* 6 Ind. 252; *Smith* v. *Ware,* 13 Johns 257; *Shepard* v. *Rhodes,* 7 R. I. 470; *Hawley* v. *Farrar,* 1 Vt. 420; *Fourth Nat. Bank* v. *Craig,* 1 Neb. Unoff. 849, 96 N. W. 185; *Golding* v. *Davidson,* 26 N. Y. 604; *Franklin* v. *Beatty,* 27 Miss. 347; but see, *Hendricks* v. *Robinson,* 56 Miss. 694; *Hill* v. *Henry,* 17 Ohio 9.

CARRIERS—CONTRIBUTORY NEGLIGENCE—PROTRUDING ARMS OF PASSENGERS. —Plaintiff, a passenger on defendant's street car, rested his elbow on the sill of an open window and permitted it to protrude about two inches beyond the outer surface of the car. The parallel tracks were so close that a passing car struck plaintiff's elbow and fractured the ulna. *Held,* that plaintiff was not guilty of contributory negligence as a matter of law. *Smith* v. *St. Louis Transit Co.* (1906), — Mo. App. —, 97 S. W. Rep. 218.

In the case of steam roads, it is almost universally held that a passenger is guilty of contributory negligence *per se* in permitting his arms or any part of his body to protrude beyond the limits of the car whereby he is injured. *Railway Co.* v. *Underwood,* 90 Ala. 49, *held,* that it is negligence *per se,* to be so declared by a court as a matter of law, for a passenger on a steam road to protrude an arm, hand or elbow through the car window beyond the outer edge of the car, and such negligence bars recovery. In

Indianapolis and Cincinnati R. R. Co. v. *Rutherford,* 29 Ind. 82, the court said that a carrier is no more bound to barricade windows to prevent passengers from extending limbs outside than to lock doors to prevent them from going from car to car while the train is in motion. This has been the holding in the following cases: *Railroad* v. *McClurg,* 56 Pa. St. 294; *Todd* v. *Railroad,* 89 Mass, 207; *Railroad* v. *Scott,* 88 Va. 958; *Dun* v. *Railroad,* 78 Va. 645; *Knauss* v. *Railroad Co.,* 29 Ind. App. 216; *Favre* v. *Railroad,* 91 Ky. 541; *Railroad* v. *Jacoby,* 14 Ky. L. R. 763; *Carrico* v. *Railway Co.,* 39 W. Va. 86. The contrary doctrine has, however, been held in *Spencer* v. *Railroad,* 17 Wis. 487, and in *Barton* v. *Railroad,* 52 Mo. 253, which cases flatly contradict the foregoing. But in *Railroad* v. *Pondrom,* 51 Ill. 333, it was held that a railroad company would be liable for the injury to a passenger notwithstanding his negligence in permitting his arm to protrude, on the ground of comparative negligence. As the doctrine of comparative negligence has been abolished (*St. Ry. Co.* v. *Meixner,* 160 Ill. 320), it is doubtful if the Illinois court would hold the same way now. It also seems to be well established that if, instead of being a passenger on a steam road, plaintiff is a passenger on an electric car, such protrusion of a limb beyond the outer surface of the car is not necessarily, as a matter of law, an act of contributory negligence, and that the facts and circumstances should be left to the jury to determine whether or not it is. It has been so decided in *Summers* v. *Crescent City R. R. Co.,* 34 La. Ann. 139; *Miller* v. *St. Louis R. R. Co.,* 5 Mo. App. 471; *Tucker* v. *Buffalo Ry. Co.,* 53 N. Y. App. Div. 571; *Dahlberg* v. *Minneapolis St. Ry. Co.,* 32 Minn. 404. But in *Butler* v. *Railway Co.,* 139 Pa. St. 195, a boy was sitting on the front platform of the car and his knees projected beyond the edge so that they were struck by an obstacle by the side of the track and a nonsuit was held not to be error. Also in *Christenson* v. *Metropolitan St. Ry. Co.,* 137 Fed. Rep. 708, a passenger who, on account of sudden illness, extended her head through the window and was struck by a trolley pole was held to be chargeable with contributory negligence as a matter of law. HUTCHINSON, CARRIERS, § 659, favors the rule as applied to street railways on account of the extraordinary diligence required of the carrier to secure his passenger against harm. However, in a recent Ohio case (see next note), SPEAR, J., says that the distinction between a passenger on an electric car and on a steam car in this respect seems to be without reason.

CARRIERS—CONTRIBUTORY NEGLIGENCE—PROTRUDING ARMS OF PASSENGERS. —Plaintiff, a passenger on an interurban electric railway car, needlessly laid her arm on a bar at one of the windows and it was struck by a car passing in the opposite direction on a parallel track. The bar was so located with respect to the seat that passengers would naturally rest their arms thereon and they were in the habit of so doing, yet there was no notice or warning of danger given plaintiff. *Held,* that plaintiff was guilty of contributory negligence as a matter of law barring recovery. *Interurban Railway and Terminal Co. et al.* v. *Hancock* (1906), — Ohio —, 78 N. E. Rep. 964.

See preceding note.